

Hon. Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

HOLLY BARKER and BRIAN CARNESS,
individually and on behalf of all the
members of the class of persons similarly
situated,

Plaintiffs,

vs.

SKYPE, INC., a Delaware corporation;
SKYPE DELAWARE HOLDINGS, INC., a
Delaware corporation; SKYPE
COMMUNICATIONS S.A.R.L., a
Luxembourg corporation; SKYPE
TECHNOLOGIES S.A., a Luxembourg
corporation; and EBAY INC., a California
corporation,

Defendants.

Case No. 2:09-cv-01364-RSM

ORDER ON FINAL APPROVAL OF
CLASS ACTION SETTLEMENT,
JUDGMENT AND ORDER OF
DISMISSAL WITH PREJUDICE

This Final Approval Order incorporates by reference the definitions in the Agreement that reflects the proposed class action settlement that currently is pending for final approval before this Court, and all terms used in this Final Approval Order shall have the same meanings as set forth in the Agreement.

By Order dated November 17, 2009, the Court preliminarily approved the Agreement and conditionally certified the Settlement Class for settlement purposes only. Due and adequate notice having been given to the Settlement Class as required by the

1 Court (see Docket No. 13, Declaration of Melissa D. Eisert Regarding Class
2 Notification), and the Court having considered all papers filed and proceedings had
3 herein, including the one valid objection to the Settlement, and otherwise being fully
4 informed of the premises and good cause appearing therefore, **IT IS HEREBY**

5 **ORDERED, ADJUDGED, AND DECREED:**

6 1. The District Court has jurisdiction over the subject matter of the Action
7 and personal jurisdiction over all the parties solely for purposes of the Action, including
8 all Settlement Class Members.
9

10 2. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and due
11 process, the District Court hereby finally approves the Agreement and finds that the
12 settlement consideration is fair and that said settlement is, in all respects, fair, just,
13 reasonable and adequate to the Settlement Class.

14 3. The Court previously certified the following Settlement Class for
15 settlement purposes under Rule 23(b)(3) of the Federal Rules of Civil Procedure:
16

17 All current and former users of Skype Communications,
18 S.a.r.l. who are residents of the United States and who
19 purchased Skype Credit that, on at least one occasion prior
20 to December 31, 2009 [i.e., the Implementation Date],
expired pursuant to Skype Communications's Skype Credit
expiration policy.

21 4. The Court finds that all elements for maintenance of this Action as a
22 class action have been met and confirms certification of the Class solely for purposes
23 of effectuating this settlement. Specifically, the Class satisfies the numerosity
24 requirement of Rule 23(a)(1); there are common issues of fact and law sufficient to
25 satisfy Rule 23(a)(2); the claims of the named Plaintiffs are typical of the claims of
26 absent Class Members, satisfying Rule 23(a)(3); the Plaintiffs are adequate

1 representatives of the Class, satisfying Rule 23(a)(4); common issues predominate
2 over individual issues, satisfying Rule 23(b)(3)(i); and class action treatment of this
3 Action is a superior method of proceeding in the matter, satisfying Rule 23(b)(3)(ii)

4 5. Except as to any individual claim of those persons (identified on Exhibit 1
5 hereto) who have validly and timely requested exclusion from the Settlement Class,
6 the District Court hereby dismisses with prejudice and without costs (except as
7 otherwise provided in the Agreement) the Action against Defendants. As to those
8 persons (identified on Exhibit 1 hereto) who have validly and timely requested
9 exclusion from the Settlement Class, the District Court dismisses the Action without
10 prejudice.
11

12 6. The Court finds that the settlement is fair, reasonable and adequate and
13 in the best interests of Plaintiffs and the Settlement Class Members and finally
14 approves the settlement in all respects, and the Parties are hereby directed to perform
15 its terms.
16

17 7. Pursuant to the terms of the Settlement, Plaintiffs and each Settlement
18 Class Member, their respective heirs, executors, administrators, representatives,
19 agents, attorneys, partners, successors, predecessors-in-interest, assigns, and all
20 persons acting for or on their behalf, are deemed to have fully released and forever
21 discharged Defendants and their present, former and future officers, directors,
22 partners, employees, agents, attorneys, servants, heirs, administrators, executors,
23 members, member entities, predecessors, successors, affiliates, parents and
24 subsidiaries (whether direct or indirect), representatives, trustees, principals, insurers,
25 vendors and assigns, or interest therein, jointly and severally, and all of the
26

1 aforementioned's respective officers, directors, employees, attorneys, vendors
 2 (including processing facilities) and assigns, jointly and severally, from any and all
 3 rights, duties, obligations, claims, actions, causes of action or liabilities, whether
 4 arising under local, state or federal law, whether by Constitution, statute, contract,
 5 common law or equity, whether known or unknown, suspected or unsuspected,
 6 asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or
 7 unliquidated, that relate to the Skype Credit Expiration Policy through the
 8 Implementation Date, including, without limitation: (i) any and all claims and causes of
 9 action that arise out of or are relate in any way to any or all of the acts, omissions,
 10 facts, matters, transactions or occurrences that were or could have been directly or
 11 indirectly alleged, asserted, described, set forth or referred to in this Action or the State
 12 Court Actions; and (ii) any and all claims and causes of action that arise out of or are
 13 related in any way to the User Accounts and the Skype Credit Expiration Policy.

14 8. Without limiting the foregoing, the Released Claims specifically extend to
 15 claims that Settlement Class Members do not know or suspect to exist in their favor at
 16 the time that the settlement, and the releases contained therein, becomes effective.
 17 This paragraph constitutes a waiver of any law that would limit the releases above,
 18 including, without limitation, section 1542 of the California Civil Code, which provides:

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
 20 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
 21 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
 22 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
 23 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
 24 HER SETTLEMENT WITH THE DEBTOR.

25 Plaintiffs and each Settlement Class Member understand and acknowledge the
 26 significance of these waivers of California Civil Code section 1542 and/or of any other

1 applicable law relating to limitations on releases. In connection with such waivers and
2 relinquishment, Plaintiffs and each Settlement Class Member acknowledge that they
3 are aware that they may hereafter discover facts in addition to, or different from, those
4 facts which they now know or believe to be true with respect to the subject matter of
5 the settlement, but that it is their intention to release fully, finally and forever all
6 Released Claims, and in furtherance of such intention, the release of the Released
7 Claims will be and remain in effect notwithstanding the discovery or existence of any
8 such additional or different facts.
9

10 9. The Court finds that the E-mail Notice provided to Settlement Class
11 Members was the best notice practicable under the circumstances of the proceedings
12 and of the matters set forth therein, and that the E-mail Notice fully satisfied the
13 requirements of due process, the Federal Rules of Civil Procedure, the Washington
14 and California Rules of Civil Procedure and any other applicable laws.
15

16 10. All Released Claims, as described in this Judgment or in the Agreement,
17 currently being asserted by or on behalf of any Settlement Class Member in any forum
18 are hereby permanently enjoined, except as may be necessary to implement the
19 settlement or comply with the terms of the Agreement. This injunction applies to,
20 without limitation, all plaintiffs in the following matters: (i) Barker v. Skype Inc., et al.,
21 Superior Court of the State of Washington, King County, Case No. 08-2-41937-1
22 SEA.; and (ii) Carness v. Skype, et al., Superior Court of the State of California for the
23 County of Los Angeles, Case No. BC 406723. Neither Plaintiffs nor any Settlement
24 Class Member, either directly or in a representative or any other capacity, nor any
25 person or entity allegedly acting on behalf of Settlement Class Members, shall
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1 commence or prosecute against Defendants, or against any of the other Released
2 Parties, any action or proceeding in any court or tribunal asserting any of the Released
3 Claims as described in the Agreement, provided, however, that this injunction shall not
4 apply to individual claims of any persons in the Settlement Class who timely excluded
5 themselves from the settlement. This injunction is necessary to protect and effectuate
6 the settlement, including this Judgment and Order of Dismissal With Prejudice, and the
7 District Court's flexibility and authority to effectuate this settlement and is ordered in
8 aid of the District Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C.
9 section 1651(a).
10

11 11. The District Court hereby dismisses, on the merits and with prejudice,
12 the Action, including all the Released Claims. This dismissal does not apply to claims
13 of Settlement Class members who timely excluded themselves from the Settlement
14 Class.
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16 12. Without affecting the finality of this Judgment in any way, this Court will
17 retain jurisdiction of all matters relating to the modification, interpretation,
18 administration, implementation, effectuation and enforcement of this Judgment, the
19 Agreement and the settlement.
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21 **IT IS SO ORDERED** this 12th day of March, 2010.

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24 RICARDO S. MARTINEZ
25 UNITED STATES DISTRICT JUDGE
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1 Presented By:

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3 s/ Roger M. Townsend

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SETTLEMENT, JUDGMENT AND ORDER OF
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